

REMARKS

This application has been amended in a manner that is believed to place it in condition for allowance at the time of the next Official Action.

Claims 40, 43-44, 47-48 and 51-52 are pending in the present application. Claims 41-42, 45-46, 49-50 and 53-55 have been cancelled. Support for amended claims 40, 43-44, 47-48 and 51-52 may be found in the previously-pending claims and generally throughout the specification. In particular, independent claim 40 has been amended to incorporate the subject matter of previously-pending claim 42. Independent claim 47 has been amended to recite the subject matter of previously-pending claim 50.

In the outstanding Official Action, claims 40-55 were rejected under 35 USC §112, first paragraph, as allegedly containing subject matter, which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor, at the time the application was filed, has possession of the claimed invention. Applicant believes that the present amendment obviates this rejection.

In imposing the rejection, the outstanding Official Action alleged that the present disclosure does not support claims directed to homologous sequences exhibiting at least 70%,

90% and 98% homology. However, as noted above, claims 40, 43-44, 47-48 and 51-52 are directed to isolated, substantially purified nucleotide sequences consisting of SEQ ID NO: 3. SEQ ID NO: 3 is plainly recited in the present disclosure. Indeed, applicant believes that the claimed invention is clearly supported by the present disclosure.

Claims 40-41 and 43-55 were rejected under 35 USC §102(a) as allegedly anticipated by BIRREN et al. This rejection is respectfully traversed.

As noted above, independent claim 40 has been amended to incorporate the subject matter of previously-pending claim 42. As a result, applicant believes that BIRREN et al. fail to anticipate or render obvious independent claim 40 and its corresponding claims 43-44.

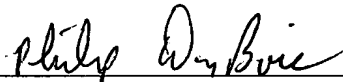
As to independent claim 47 and its dependent claims 48 and 51-52, BIRREN et al. fail to disclose or suggest a utility for the disclosed sequence. Indeed, the BIRREN et al. publication does not disclose or suggest an isolated, substantially purified nucleotide sequence consisting of SEQ ID NO: 3 that is coupled to a reporter system and is a marker for compounds exhibiting insulin regulating properties. As a result, applicant believes that BIRREN et al. also fail to anticipate or render obvious independent claim 47 and dependent claims 48 and 51-52.

In view of the present amendment and the foregoing remarks, therefore, it is believed that this application is now in condition for allowance, with claims 40, 43-44, 47-48 and 51-52, as presented. Allowance and passage to issue on that basis are accordingly respectfully requested.

The Commissioner is hereby authorized in this, concurrent, and future replies, to charge payment or credit any overpayment to Deposit Account No. 25-0120 for any additional fees required under 37 C.F.R. § 1.16 or under 37 C.F.R. § 1.17.

Respectfully submitted,

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